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Orbit Irrigation Products, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

ORBIT IRRIGATION PRODUCTS, INC., a Utah corporation, Plaintiff, v. MELNOR, INC., a Delaware corporation, Defendant.	**COMPLAINT AND DEMAND FOR JURY** Civil Action No. 1:17-CV-0046-DBP

Plaintiff Orbit Irrigation Products, Inc. ("Orbit") complains and alleges against Defendant Melnor, Inc. ("Melnor") as follows:

THE PARTIES

1. Orbit is a corporation organized and existing under the laws of the State of Utah, having an office and principal place of business at 845 North Overland Rd., North Salt Lake Utah, 84054. Orbit is a manufacturer of, *inter alia*, irrigation timers.

2. Melnor is a corporation organized and existing under the laws of the State of Delaware, having an office and a principal place of business at 260 West Brooke Road,

Winchester, VA 22603. Melnor also manufactures and sells, *inter alia*, irrigation timers.

3. The allegations of this Complaint are related to the allegations of *Orbit Irrigation Products, Inc. v. Melnor, Inc.,* Civil Action No. 1:16-cv-00137-CW-DBP ("the Pending Action"). The parties in the Pending Action are the same as in this action, and one of the products accused of infringement in the Pending Action is also accused of infringement in this action. The patent that is the subject matter of the Pending Action is U.S. Patent No. D750,977 ("the '977 Patent"). The patent at issue in this action is U.S. Patent No. D782,340 ("the '340 Patent") which issued on March 28, 2017, and issued from a continuation application claiming priority to the application from which the '977 Patent claims priority. Orbit is filing a motion to consolidate this action with the Pending Action.

NATURE OF THE CLAIMS

4. This is an action for injunctive relief and damages arising out of patent infringement by Melnor of the '340 Patent, owned by Orbit. A true and correct copy of the '340 Patent is attached hereto as Exhibit A.

SUBJECT MATTER JURISDICTION

5. This action arises under the patent laws of the United States, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281, 283, 284, 285, and 289.

6. This Court has subject matter jurisdiction over Orbit's claims for relief pursuant to 28 U.S.C. §§ 1331 and 1338(a).

PERSONAL JURISDICTION AND VENUE

7. Among the irrigation timers Melnor has sold in this district are an earlier

generation of water timers sold as model numbers 53280, 53100, 53015, 33100, 33015 and 33280 ("the 1st GEN Accused Products"), which adopt the claimed features of the Orbit '340 patent.

8. After Orbit put Melnor on notice that it infringed the '977 patent, Melnor began selling a second generation of water timers ("the 2nd GEN Accused Products") in this district under the same or very similar model numbers as the 1st GEN Accused Products.

9. Melnor sells the 2nd GEN 53280-L model through Utah Lowe's stores as an in-store, off-the-shelf item customers can purchase directly in the store. The following is a photograph of a 2nd d GEN Melnor Model 53280-L product as displayed in a Lowe's store located in Bountiful, Utah:

HydroLogic
Timer
Electronic Water Timer
4
• Separate programming for up to 4 areas
• Easily set different schedules for each day
• Wide range of watering options
• Easily switch to manual watering
melnor
START WATER
HOW LONG
HOW OFTEN
SET TIME
OFF
AUTO
10:30
OK

10. The following screen shot shows that the 2nd GEN Accused Product is available in the Murray, Utah store in aisle 16, bay 7:

Melnor Digital Timer

Item # 790509 Model # 53280-L

★★★★★ (1 Review)

$49.98

– 1 + ADD TO CART

SAVE SHARE

FREE Store Pickup

4 available today at Murray Lowe's!

Shipping & Delivery

Available!

Aisle 16 , **Bay** 7

In-Store Map

11. Melnor is currently selling the 1st GEN Accused Products through Home Depot to customers in Utah, as evidenced by the following clip from the Home Depot website:

Model # 53100-HD Internet #206484983 Store SKU #1001565700

melnor
START WATER
SET TIME
HOW LONG
HOW OFTEN
OFF
AUTO
NEXT START TIME
AM 10:30
ZONE
OK
FOR RAIN DELAY PRESS

We'll send it to E Salt Lake City for free pickup

Available for pickup

March 30 - April 4

Check Nearby Stores

12. As set forth above, Melnor has sold and offered for sale and is selling and offering for sale the 1st and 2nd GEN Accused Products in this district, and has thereby committed tortious acts in this district, including, but not limited to, the sale and offer for sale of the Accused 1st and 2nd GEN Products and availed itself of the privilege of doing business under the laws of the State of Utah. This Court has personal jurisdiction over Melnor pursuant to Fed.R.Civ.P. 4(k)(1)(A) and Utah Code Ann. § 78B-3-205. This Court's exercise of personal jurisdiction over Melnor is consistent with the Constitution of the United States.

13. Venue is proper in this district pursuant to at least 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred within this judicial district and/or Melnor has committed acts of infringement within the State of Utah by selling and/or offering to sell the Accused Products through Home Depot and other established distribution channels, including a variety of nationwide retailers.

FACTUAL BACKGROUND

14. Various ornamental aspects of a line of Orbit's irrigation timers (the "Orbit Irrigation Timers") are protected, *inter alia*, by the '340 Patent. Orbit is the owner and assignee of all right, title and interest in and to the '340 Patent.

15. The Orbit Irrigation Timers sold by Orbit have been extremely successful and well received by consumers. Orbit has sold literally hundreds of thousands of the Orbit Irrigation Timers. The Orbit Irrigation Timers, which include Orbit product nos. 24600, 24713, 24713P and 24723, have been sold through nationwide retailers. Images of representative Orbit products are attached hereto as Exhibit B.

16. In contrast to the many irrigation timers that have been on the market for decades, Orbit's Irrigation Timers include a unique and highly recognizable design feature that is not found elsewhere in the irrigation timer market. The unique nature of this design feature is corroborated, for example, by the United States Patent and Trademark Office finding that the claimed design of the '340 Patent is new and not obvious and issuing the '340 Patent.

17. Melnor manufactured and sold irrigation timers for a number of years, which were different in appearance from the Orbit Irrigation Timers. After Orbit had achieved commercial success with the Orbit Irrigation Timers, Melnor made a pronounced change to its designs and began to market the 1st GEN Accused Products, and later the 2nd GEN Accused Products, which include copies of the ornamental features found in Orbit's Irrigation Timers and claimed in the '340 Patent. In particular, Melnor has sold and continues to sell and offer for sale the 1st and 2nd GEN Accused Products through major national retailers, such as the Home Depot, Lowe's, Amazon.com, Walmart and Sears.

18. While the various models of the 1st and 2nd GEN Accused Products have slightly different configurations (such as the number of hose lines that can be accommodated), they each have the common "How Long How Often" feature on the periphery to the right of the digital display, as shown above. The illustrations below depict (1) a drawing from the claim of the '340 Patent, (2) the covered Orbit product, (3) the infringing 1st GEN Accused Product and (4) the infringing 2nd GEN Accused Product. Only the design depicted by the solid lines in the drawings of the '340 Patent is claimed.

Drawing from the Claim of the '340 Patent

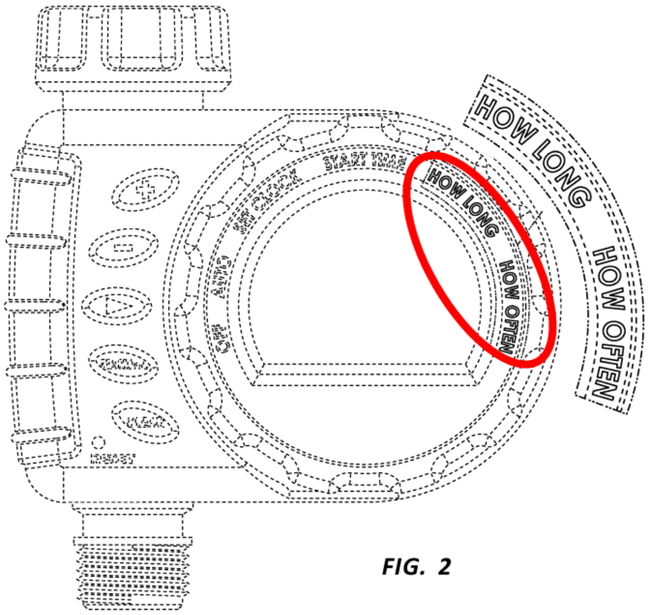
HOW LONG
HOW OFTEN
HOW LONG
HOW OFTEN

FIG. 2

Example of Orbit Product Embodying Claim of the '340 Patent

START TIME
SET CLOCK
HOW LONG
HOW OFTEN
AUTO
OFF
11:48 AM
Orbit

Infringing 1st GEN Accused Product

melnor
START WATER
HOW LONG
HOW OFTEN
SET TIME
OFF
AUTO
AM
TODAY
8:10
FR
FOR RAIN DELAY PRESS+
OK
ON/OFF
MANUAL

Infringing 2nd GEN Accused Product

melnor
START WATER
HOW LONG
HOW OFTEN
SET TIME
OFF
AUTO
TIME
AM
TODAY
7:00
SU MO TU WE TH FR SA
FOR RAIN DELAY PRESS+
OK
ON/OFF
MANUAL

19. As demonstrated above, the design of the 1st and 2nd GEN Accused Products is substantially the same as the claim of the '340 Patent, such that an ordinary observer purchasing 1st or 2nd GEN Accused Products would believe that she had purchased the patented Orbit designs.

20. Melnor has engaged in an extensive campaign to sell and/or offer for sale the 1st and 2nd GEN Accused Products in competition with the Orbit Irrigation Timers, and in violation of the '340 Patent.

COUNT I
PATENT INFRINGEMENT OF THE '340 PATENT
(35 U.S.C. § 271)

21. Orbit repeats and incorporates by reference the allegations set forth above as though fully set forth herein.

22. Orbit is the exclusive owner and assignee of all right, title and interest in and to the '340 Patent. The '340 Patent was duly and properly issued by the U.S. Patent and Trademark Office and is valid and enforceable.

23. Each of the 1st and 2nd GEN Accused Products includes a design feature that is substantially the same as the ornamental design claimed in the '340 Patent such that an ordinary observer would be deceived into purchasing one of the 1st or 2nd GEN Accused Products believing that she had purchased products including the patented design.

24. Melnor has infringed and continues to infringe the claim of the '340 Patent by importing, making, using, selling and/or offering to sell the 1st and 2nd GEN Accused Products, and Melnor will continue to do so unless enjoined by this Court.

25. On information and belief, Melnor's infringement has been willful.

26. Melnor's activities constitute infringement of the '340 Patent without authority or license from Orbit and in violation of Orbit's rights pursuant to 35 U.S.C. § 271.

27. Melnor's infringement of the '340 Patent has caused irreparable injury to Orbit, entitling Orbit to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

28. Melnor's infringing activities entitle Orbit to an award of damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by Melnor under 35 U.S.C. § 284.

29. Alternatively, Orbit is entitled to recovery of Melnor's total profits from its sale of the 1st and 2nd GEN Accused Products under 35 U.S.C. § 289.

COUNT II
STATE UNFAIR COMPETITION
(Utah Code Ann. § 13-5a-101 et seq.)

30. Orbit repeats and incorporates by reference the allegations set forth above as though fully set forth herein.

31. Melnor by its actions set forth above has engaged in intentional business acts or practices that are unlawful, unfair, and/or fraudulent intentional business acts or practices and that constitute infringement of a patent, trademark or trade name. Such unlawful intentional business acts or practices include the unlawful and intentional copying of designs engineered and popularized by Orbit.

32. Melnor's actions as set forth above gives rise to a cause of action for unfair competition under the statutory law of the State of Utah, including at least Utah Code Ann. § 13-5a-101, et seq.

33. Melnor's activities as set forth above entitle Orbit to an award of actual damages, costs and attorneys' fees and, if the Court determines that the circumstances are appropriate, punitive damages under Utah Code Ann. § 13-5a-103(1)(b).

PRAYER FOR RELIEF

WHEREFORE, Orbit respectfully prays for final judgment against Melnor as follows:

A. Judgment finding that the '340 Patent is valid, enforceable and infringed by Melnor;

B. Preliminary and permanent injunctions against Melnor, its officers, agents, servants, employees, successors, assigns and all other persons in active concert or participation with any of them, enjoining them from directly or indirectly infringing in any manner the claims of the '340 Patent;

C. Judgment granting Orbit damages adequate to compensate it for Melnor's infringement of the '340 Patent, including an award of Melnor's total profits under 35 U.S.C. § 289, but in no event less than a reasonable royalty for the use made of the invention by Melnor under 35 U.S.C. § 284, in amounts to be proven upon proper proof at trial;

D. Trebling of Orbit's damages pursuant to 35 U.S.C. § 284;

E. Judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, together with an award of Orbit's attorneys' fees;

F. Judgment that Melnor has committed acts of unfair competition under Utah Code Ann. § 13-5a-103;

G. Judgment granting Orbit its reasonable attorneys' fees pursuant to Utah Code Ann. § 13-5a-103;

H. Judgment granting Orbit punitive damages pursuant to Utah Code Ann. § 13-5a-103;

I. Orbit's costs in bringing this action pursuant to all applicable federal, state and statutory law, including at least 35 U.S.C. § 284 and Utah Code Ann. § 13-5a-103;

J. Prejudgment interest pursuant to all applicable federal, state and statutory law, including at least 35 U.S.C. § 284;

K. Post-judgment interest pursuant to all applicable federal, state and statutory law, including at least 28 U.S.C. §1961(a);

L. For such other and further relief as the Court deems just and equitable.

JURY DEMAND

Orbit demands a trial by a jury for all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED this 28th day of March, 2017.

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